

**BOARD OF APPEALS CASE NO. 162**

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**BEFORE THE**

**APPLICANTS: Shelter Development LLC  
and Robert Cassilly, Jr., et al.**

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**ZONING HEARING EXAMINER**

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**OF HARFORD COUNTY**

**REQUEST: Rezone 68.36 acres from B1/GI to  
B3/R3 District**

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**HEARING DATE: May 21, 2007**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Shelter Development, LLC, and Robert R. Cassilly, Jr., et al, are requesting a rezoning pursuant to Section 267-12A of the Harford County Code of 68.36 acres from a B1/GI District to a B3/R3 District. The subject parcel is located within the First Election District at the northwest corner of MD Route 7 and Creswell Road, Aberdeen, MD and is more particularly identified on Tax Map 57, Grid Number 4F, Parcel 108.

### **REQUEST:**

The Applicant is alleging that a mistake occurred during the 1997 Comprehensive Rezoning which would justify rezoning the subject parcel from a GI/B1 to a B3/R3 District. The Applicant is not alleging a change in the character of the neighborhood subsequent to the 1997 Comprehensive Rezoning.

### **TESTIMONY AND EVIDENCE OF RECORD:**

The first witness to testify for the Applicant was Mr. Mr. Jeffrey Hettleman, who qualified, and was admitted as an expert in the field of real estate development. Mr. Hettlemen testified that he is the Executive Vice-President, and official spokesperson for the Applicant. Shelter Development, LLC. The corporation is a private company located in Baltimore Maryland, which develops and manages apartment complexes and senior living facilities. It has also completed projects in Harford County, including two senior living facilities and several apartment developments. The witness stated that he has worked with Shelter Development, LLC for thirteen years, and has been directly involved in many developments, including most of its projects in Harford County.

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Mr. Hettleman testified that the Applicants have filed a request to rezone 68.36 acres from a B1/GI District to a B3/R3 District. The property is owned by a family of 6 individuals and several trusts. Applicant, Shelter Development, LLC, is the contract purchaser of the subject parcel. The witness indicated that Mr. Frederick Ward, an expert land planner who would testify later in the proceeding, had prepared a site plan and environmental features map of the subject property. The environmental features map, which he identified as Applicant's Exhibit No. 27, was submitted with the Application. Mr. Hettleman stated that the subject property is located on the northeast side of MD Route 7 (Philadelphia Road) and is bounded on the north by Interstate I95, on the west by Belcamp Road, and on the east by Creswell Road.

According to the witness, the subject property, contains approximately 70 acres, and is located near the intersection of MD Routes 543 and 7. The parcel is currently vacant. There is a small portion of B1 zoned land located along the southwest property line at the intersection of Belcamp and Old Philadelphia Roads. The remainder of the parcel is zoned GI. Mr. Hettleman testified that the property owners have made numerous unsuccessful attempts, over a number of years, to sell the property under its current zoning classification.

Referring to the environmental features map (Applicant's Exhibit No. 27), Mr. Hettlemen explained that the areas depicted in blue on that map are wetlands and streams, and the green areas are required buffer zones. Because there are strict limitations on development in the areas designated as blue and green, only the remaining white portions of the subject property are actually developable. He stated that as an expert real estate developer he would characterize the environmental constraints of the subject property as substantial. He further indicated that those restraints, while not actually confiscatory, do not lend the property to the types of industrial uses contemplated under the Harford County Zoning Code. Those uses generally require lots with large buildable footprints. In his opinion, the smaller developable portions of the subject property are more conducive to residential development.

Mr. Hettlemen testified that the Applicants are requesting that the small B1 zoned portion of the property along the southwestern property line be rezoned from B1 to B3, and that the remainder of the property be rezoned from GI to R3. According to the witness the requested rezoning is appropriate because it is consistent with the Master Plan, the subject property is located within the Development Envelope in a high density area, and there is public sewer and water available from the opposite side of MD Route 7.

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Mr. Hettlemen further testified that the area where the subject property is located is already residential in character. Not only is there residential development adjacent to the property, there is also a new residential development across the street from the parcel. Referring to the Tax Map introduced as Applicant's Exhibit No. 15, Mr. Hettleman pointed out residential developments at the northeast corner of property near Creswell Road, on the opposite side of Creswell Road, and to the south. Additional residential development is found to the northeast along Interstate 95. On the west side of MD Route 7 there is single family residential development for approximately 1-½ miles, and then additional large residential developments either existing or under development. The witness stated that in his opinion, the requested rezoning would allow for development of the subject parcel in a manner which would provide less impact to the prevailing residential community than industrial development. He also stated that there will be a need for increased residential development in the area due to the BRAC (Base Realignment & Closure) Program, which is expected to result in increased jobs and ancillary businesses.

Mr. Hettlemen further testified that during the 2005 Comprehensive Rezoning Review the Applicant request rezoning of the subject parcel from B1/GI to B3/R3. The Department of Planning and Zoning, recommended rezonning the entire parcel to R3 and the Council voted to approve the request. However, the County Executive vetoed the legislation and the 1997 zoning classifications remain in effect.

In response to questions on cross-examination by Mr. Harry R. Parks, Jr., 1439 Creswell Road, Aberdeen, MD 21001, Mr. Hettleman testified that the Applicant presently has no set plan as to what type of housing will be constructed on the subject property. He indicated that this decision will be dictated by market conditions at the time of development, which can not occur until after the existing building moratorium is lifted. However, he did state that the Applicant's current intent is to construct market rate housing consistent with the price they are paying for the property. It is not presently planning to construct subsidized low income, or senior housing on the parcel. In today's market single family homes in the development would sell in the \$300,000 - \$400,000 range, townhouses in the high \$200,000 range, and apartment rentals would begin at approximately \$1,000 per month. Mr. Hettlemen also testified in response to cross-examination by these Protestants that the existing B1

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zoned portion of the subject property is approximately one acre in size, and that the Applicants are requesting that this be increased to 2.6 acres. He stated that he does not know at this time whether his company would be handling road improvements at the site; however, the development access will probably be either off of MD Route 7 (Philadelphia Road) or Creswell Road. He also testified that substantial areas of subject parcel will remain undeveloped due to non-tidal wetlands and buffer zone restrictions.

In response to questions on cross-examination by Mr. Allen Russell, 1305 Tralee Circle, Aberdeen, Mr. Hettlemen testified that Shelter Development, LLC has no current intent to sell the property prior to construction. He could not, however, guarantee that it would not, at some point, transfer the property to a builder. The witness reaffirmed his prior testimony that there is public water and sewer available to the subject site, and stated that the County plans to design the Wexford sewer line to service the Applicant's proposed residential development. The witness testified that the DAC process, which requires a traffic study, will address issues such as whether a traffic control device will be required at the entrance to MD Route 7 from the development. Mr. Hettleman stated that under current zoning, he believes development on the subject site would be limited to 420 apartments, 125 townhouses or some combination thereof. However, he reiterated that the Applicant can not definitively state at this time what type of housing will be constructed on the subject parcel because the Applicant must develop in accordance with market conditions in effect at the time of development. Mr. Allen advised the witness that he was not opposed to the requested rezoning.

In response to questions on cross-examination by Mr. Donald Irwin 4415 Old Philadelphia Road, Aberdeen, Mr. Hettleman testified that the bulk of the 2-1/2 acres for which the Applicant has requested B3 zoning is not actually developable due to existing non-tidal wetlands and buffer areas. The witness verified that he aware of several large residential developments under construction in the immediate vicinity of the subject property, and again stated that public water and sewer for the subject property will likely be provided through the Wexford sewer line. Mr. Irwin also noted that he was not opposed to the requested rezoning.

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Mr. Craig Ward, a civil engineer, and President of Frederick Ward and Associates qualified, and was admitted as an expert in the field of real estate development. The witness testified that he had reviewed the Application, Staff Report, Tax Maps, Harford County Zoning Code, the 1996 and 2004 Master Plans, and both the 1997 and current Harford County Zoning Maps. Mr. Ward stated that he had personally visited the subject property, and that he agreed with the description of that site set forth in the Staff Report. The witness further testified that his firm had prepared the Environmental Features Map admitted as Applicant's Exhibit No. 27.

Mr. Ward defined the neighborhood of the subject property as being bounded by Interstate 95, Stepney Road, U.S. Route 40 and the Riverside Community. He acknowledged that the Department of Planning and Zoning described the neighborhood differently in its Staff Report, but stated that this did not impact his testimony because Applicant is not alleging a change in the character of the neighborhood since the last comprehensive rezoning.

According to the witness the subject property is located within the Development Envelope, and is designated High Intensity. The 1977 Master Plan classified the property as split High Intensity/Employment, which is consistent with its current zoning classification. The 2004 Master Plan changed the parcel's classification solely to High Intensity, noting that the surrounding area had experienced a significant change in focus, and a strong shift toward residential development. The witness further testified that according to the 2004 Master Plan, the true extent of wetlands located on the subject parcel was unknown to the County during the 1997 Comprehensive Rezoning Review. Mr. Ward explained that the developable areas are irregularly shaped, separated pods, the largest of which is 12 acres in size. According to the witness, the predominant industrial uses found within Harford County are big box stores type stores with large footprints and large parking acres. The minimum lot size required for a use of that type exceeds twelve acres.

Mr. Ward opined that the Council either knew or should have known about the above factors during the 1997 Comprehensive Rezoning Review, but failed to consider them. As a result he contends that a mistake was made with regard to the zoning classification of the GI portion of the subject parcel at that time. He also indicated that although the 2004 Master Plan noted a change in residential development patterns subsequent to the 1997 rezoning, he believes those patterns were already in place prior to 1997.

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Mr. Ward also opined that the council made a mistake in zoning the B1 portion of the subject property during the 1997 comprehensive rezoning. In support of this allegation he testified that the existing B1 portion of the subject property is not well suited for the types of commercial uses permitted within that District. The developable area of the B1 zoned portion of the subject property is only one acre in size. It is surrounded on three sides by wetlands and buffer areas, effectively cutting it off from the remainder of the parcel. Further, it is located on a corner, at the intersection of Belcamp and Old Philadelphia Roads, and is the only corner of that intersection without B3 zoning. Therefore, the witness believes that the B1 portion of the subject property should have been zoned B3 during the 1997 Comprehensive Zoning Review.

Finally, the witness testified that the Applicant requested the B1 portion of the property be rezoned to B3, and the GI portion of the property be rezoned to R3 during the 2005 Comprehensive Zoning Review. The Department of Planning and Zoning issued reports in connection with both of those requests indicating that there were no environmental constraints on either portion of the subject property. The Department recommended R3 zoning for the entire 63.86 acres of the subject parcel during that zoning review. That recommendation was subsequently approved by the Council. The witness opined that this continued lack of knowledge about the environmental factors present on the property further demonstrates the original mistake of fact made during the 1997 Comprehensive Zoning Review.

In response to questions on cross-examination by Mr. Donald Irwin, the witness indicated that the B1 zoning classification allows for a wide variety of commercial uses such as convenience stores, and that it is primarily found in rural areas. The B3 District on the other hand allows higher intensity, and a wider variety of uses including motor vehicle sales and gas stations. The B3 zone also allows development of uses such as auction houses and hotels or motels; however, he stated that such uses would not be feasible on the subject property because only .94 acre of the requested B3 area is developable. The balance of the parcel is restricted by non-tidal wetlands and buffer zones. Mr. Ward further indicated that development of the subject property will bring public sewer across MD Route 7 into the proposed neighborhood, and that there has been a plan in the works for quite some time to bring public sewer to the entire area. He also explained the typical steps in the development process.

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In response to questions on cross-examination by Mr. Rudy Carroll, 1817 Falstaff Road, Bel Air, Mr. Ward testified that site engineering has not yet been done with regard to storm water runoff for the proposed site. However, the Applicant will be required to address that issue as part of the site design process. Problems with springs backing up into area yards will likely also be addressed at that time.

In response to questions on cross-examination by Mr. Allen Will, 1338 Tralee Circle, Aberdeen, Mr. Ward testified that the developable area of the subject parcel is approximately 27 acres. The isolated plots of developable land will probably be connected by crossings, some of which will traverse the wetlands to provide access to different areas of the property. However that issue will need to be worked out during the wetlands engineering process. With regard to site access, Mr. Ward testified that there will likely be one connection from the development onto MD Route 7 and one onto Old Philadelphia Road. In addition, the proposed B3 area will probably access Belcamp Road. The Applicant is not anticipating any access from the proposed development to Creswell Road due to steep grades along the boundary with that roadway.

Mr. Anthony McClune, Deputy Director of the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. He indicated that the Department had reviewed the Application and Attachments, visited the site and surrounding area, prepared photographs and submitted an aerial photograph in connection with its investigation. The Department recommended that the entire 63.86 acres of the subject property be approved for rezoning to R3/Urban Residential District in its April 18, 2007 Staff Report.

The Department disagrees with Applicant's definition of the neighborhood. It defines the neighborhood as "all those parcels south of Interstate 95, north of MD Route 7, east of MD Route 543 and west of Stepney Road,... and all those parcels with frontage along the of Stepney Road and the south side of MD Route 7." However, Mr. McClune agreed with Mr. Ward that the definition of the neighborhood has no significant impact on the subject application because the Applicant has not alleged any change in the character of the neighborhood since the 1997 comprehensive rezoning. According to the witness the subject property is located within the Development Envelope in an area designated as High Intensity. The 1996 Land Use Plan designated split zoning for the parcel, as the County formerly anticipated development of the area along industrial lines.

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Mr. McClune described the zoning history of the subject property as more fully set forth in the Staff Report. He also indicated that the Applicant had requested rezoning of the subject property from B1/GI to B3/R3 during the 2005 Comprehensive Review. The Applicant requested at that time that the B1 portion of the property be rezoned to B3, and that the size of the area be expanded. It also requested that the GI portion of the subject property be rezoned to R3. The Department of Planning and Zoning recommended that the entire parcel be rezoned to R3. The Council voted to approve that recommendation. However, the 2005 Comprehensive Rezoning was never enacted due to having been vetoed by the County Executive. Therefore, 1997 zoning classification remains in effect

According to the witness, the Department agrees with the Applicant that a mistake in the legal sense occurred with regard to the subject property during the 1997 Comprehensive Zoning Review. He indicated that unanticipated land use pattern changes have occurred in the area of the subject property since that time. Mr. McClune verified that the subject property is in fact highly constrained by streams and buffer areas, the existence, or extent of which were unknown at the time of the 1997 comprehensive rezoning. He also stated that the DNR prohibits disturbance of wetlands except for necessary crossings and utility work. Mr. McClune further testified that the Council was aware of those environmental features during the 2005 comprehensive rezoning process, when it voted to rezone the entire parcel to R3. He also stated that the Department currently recommends R3 zoning for the entire parcel, and that the Planning Board had also reviewed the request, and voted 3-0 to rezone the entire property R3.

In response to questions from the Hearing Examiner, Mr. McClune indicated that the B1 District is more of a neighborhood type classification, while the B3 District is more of a highway use designed for higher traffic areas. He further indicated that the Department prefers, wherever possible, not to split-zone individual parcels. In response to questions on cross-examination by Mr. Robert Cassilly, 306 Mauser Drive, Belair, the witness stated he is aware that there is a County Park and Ride located across the street from the B1 zoned portion of the subject property.

No testimony or evidence was presented in opposition to the subject application.



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### **APPLICABLE CODE PROVISIONS:**

Harford County Code Section 267-12 A. Zoning Reclassifications states:

“Application initiated by property owner.

- (1) Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:
  - (a) The location and size of the property.
  - (b) A title reference or a description by metes and bounds, courses and distance.
  - (c) The present zoning classification and the classification proposed by the applicant.
  - (d) The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.
  - (e) A statement of the grounds for the application, including:
    - [1] A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and the facts relied upon to support this allegation.
    - [2] A statement as to whether there is an allegation of substantial change in the character of the neighborhood and, if so, a precise description of such alleged substantial change.
  - (f) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.”

Harford County Code Section 267-91 will be addressed below.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

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The Applicant, Shelter Development, LLC is requesting a rezoning of 68.36 acres from a B1/GI District to a B3/R3 District. The majority of the parcel is zoned GI but a small portion consisting of approximately 1 acre located along the southwestern boundary line is zoned B1. The Applicants are requesting to rezone the B1 portion of the property to B3, and to extend that area into the GI zoned section to extend the area to approximately 2.5 acres total. It is also requesting to rezone the GI portion of the property to an R3 District. The basis of the Applicant's request is that a mistake occurred during the 1997 Comprehensive Zoning Review. The Applicants are not claiming any change in the character of the neighborhood of the subject property since the 1997 rezoning.

### **ZONING HISTORY OF THE SUBJECT PARCEL:**

1957 Comprehensive Zoning Review: The property was split zoned AG/B1. The B1 portion of the property was located along the southwestern property line at the intersection of Belcamp and Philadelphia Roads. (Staff Report Attachment 12)

1982 Comprehensive Zoning Review: The AG portion of the subject property was rezoned to GI, while the B1 portion remained unchanged. (Staff Report Attachment 13)

1989 Comprehensive Zoning Review: The property remained split zoned GI/B1. (Staff Report Attachment 14)

1997 Comprehensive Zoning Review: The property remained split zoned GI/B1. (Staff Report Attachment 15)

2005 Comprehensive Zoning Review: The Applicant requested that the B1 portion of the subject property be rezoned to B3 and expanded to include an additional 1.5 acres from the GI zoned portion of the property. It also requested that the GI zoned portion of the property be rezoned to R3. The Department of Planning and Zoning recommended that the entire parcel be rezoned to R3. The County Council voted to change the zoning of the entire parcel to R3, however the County Executive vetoed that Legislation. The Council did not override the veto and the 1997 zoning classifications therefore remain in effect.

The Maryland Court of Special Appeals addressed the strong presumption of correctness of comprehensive rezoning and the evidence necessary to overturn that presumption on the ground of mistake in the case of *Boyce v. Sembly*, 25 Md. App. 43, 334 A.2d 137 (1975) stating:

"... A perusal of cases, particularly those in which a finding of error was upheld,

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indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. (Cases cited.) Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect." 25 Md. App. at 50-51, 334 A.2d at 142-43.

Boyce continued ...

"It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning, *Bonnie View Club, supra*, at 242 Md. 48-49, 52 ... (mineshaft and subsurface rock formation); by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account, *Overton, supra*, at 225 Md. 216-17 ... (topography); or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning, *Jobar Corp., supra*, at 236 Md. 116-17 ... (need for apartments)." See *Rohde, supra*, at 234 Md. 267-68, 199 A.2d 221.

"Because facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'" 25 Md. App. at 51-52, 334 A.2d at 143.

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The Maryland Court of Special Appeals defined the term “error” as it applies to a mistake in the last comprehensive rezoning as follows:

“The term ‘error’ as it is used in zoning law does include the failure to take into account projects or trends reasonably foreseeable of fruition in the future. But in order to establish error, there must be evidence to show that such developments were not, in fact, or could not have been, taken into account so that the Council’s action was premised on misapprehension.” *Coppolino v. County Board of Appeals of Baltimore County*, 23 Md. App. 358, 372 (1974).

The subject property is located within the Development Envelope, and is designated High Intensity. The 1977 Master Plan classified the property as split High Intensity/Employment. The 2004 Master Plan changed the parcel’s classification solely to High Intensity, noting that the surrounding area had experienced a significant change in focus, and a strong shift toward residential development. The Applicant’s expert land use planner, Mr. Ward, indicated that, in his opinion those patterns were already in place prior to 1997, but introduced no evidence in support of this allegation. The Department agreed with the Applicant that a mistake occurred during the 1997 Comprehensive Zoning Review regarding the subject property. Mr. McClune attributed this mistake to unanticipated land use pattern changes occurring in the area subsequent to that date.

In addition, the Applicants presented clear evidence that the true extent of wetlands located on the subject parcel was unknown to the County during the 1997 Comprehensive Rezoning Review. Only 27 acres of the 68 plus acre parcel are actually developable. The remainder of the property is encumbered by non-tidal wetlands and required buffer zones. The developable areas are irregularly shaped, separated pods, the largest of which is 12 acres in size. Mr. Ward also presented uncontradicted testimony that the predominant industrial uses found within Harford County are big box stores type stores with large footprints and large parking acres. The minimum lot size required for a use of that type exceeds twelve acres. Mr. McClune verified that the subject property is in fact highly constrained by streams and buffer areas, the existence, or extent of which were unknown at the time of the 1997 comprehensive rezoning. He also stated that the DNR prohibits disturbance of wetlands except for necessary crossings and utility work.

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The Hearing Examiner, finds, based on the evidence presented, that the Board did not anticipate, and therefore failed to consider the shift in focus toward residential development in the area of the subject property at the time of the 1997 Comprehensive Rezoning. The Hearing Examiner also finds, that the Board had no knowledge of the nature or extent of the environmental features located on the property at the time of 1997 Comprehensive Rezoning, and that this fact was not considered by the Board at that time. The Applicants have therefore met their burden of proving a mistake in the 1997 Comprehensive Rezoning by showing specific facts which that were not considered by the Board during that process.

"[T]he existence of a mistake by the zoning authority at the time of the original zoning permits the legislative body to grant the reclassification, but does not require it to do so."  
*Chesapeake*

*Ranch Club v. Fulcher*, 48 Md. App. 223, 228, 426 A.2d 428,431 (1981). "Once a mistake is established, the council is in the same position as it was in at the time of the prior comprehensive rezoning..., before the strong presumption of validity had been created... At that point, it has the same power to rezone that it had at the time of the comprehensive rezoning... . *White v. Spring*, 109 Md. App. 692, 675 A.2d 1023 (1996)

With regard to the requested rezoning of the GI portion of the property to R3, the Hearing Examiner finds that had the Board been aware of the extent of the impending shift toward residential development in the area it would have rezoned the property R3 during the 1997 Comprehensive Rezoning Review. The property is currently designated High Intensity, which is defined as an area within the Development Envelope where residential development occurs at a density greater than 7.0 dwelling units per acre. Residential development of the subject property would be more in line with surrounding uses than industrial development. In addition severe environmental constraints located on the subject property make it unsuitable for industrial development. The smaller developable portions of the subject property are more conducive to residential development.

With regard to the Applicant's request to rezone the B1 portion of the property to B3, and to expand that area into the GI area, the Hearing Examiner finds that even if the Board had been aware of the aforesaid factors it would likely have retained the existing zoning classification. As

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previously noted the area surrounding the subject property is experiencing a shift toward residential development. Had the Board known of this fact, it probably would not have increased the size or intensity of the commercially zoned area. On the other hand, that portion of the property had been zoned B1 since the original comprehensive zoning in 1957. Although Mr. McClune testified that the Department prefers not to split zone properties whenever possible, no reason was given for this preference, and the subject property has been split zoned since at least 1957. Further, the B1 zoned portion of the property is located at the intersection of Belcamp and Old Philadelphia Roads. Down-zoning that area to R3 would make it the only corner at that intersection without commercial zoning.

The Applicant's expert land planner, Mr. Ward indicated that in his opinion the Board erred in failing to rezone the B1 portion of the property to B3 during the 1997 Comprehensive Zoning Review because that area is not well suited for the types of commercial uses permitted within that District. However, Mr. McClune introduced uncontradicted testimony that the B1 District is more of a neighborhood type classification, while the B3 District is more of a highway use designed for higher traffic areas. In light of the shift in development focus, a neighborhood commercial use would be more in keeping with the residential nature of the surrounding area.

The Applicant' rezoning request is also subject to review under Section 267-9I. The text of that Code section with the Hearing Examiner's evaluation of those factors (*in italics*) follows

"Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

*The area of the subject property is has experienced a significant change in focus, and a strong shift toward residential development. The proposed rezoning will therefore have no adverse impact on persons living or working in the immediate area.*

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- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

*There was no evidence introduced to indicate that the proposed use would adversely impact traffic.*

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

*The proposed rezoning is in compliance with the Master Plan, and is also in harmony with other uses presently found in the area. There was no evidence introduced to indicate any potential adverse fiscal impact on the County.*

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.

*No such impacts are anticipated as a result of the proposed use.*

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

*Public sewer and water will be available to the subject property. No evidence was introduced to indicate that there will not be adequate facilities for police, fire protection, trash and garbage collection or garbage disposal available to the property.*

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

*Not applicable to the subject request.*

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

*No evidence was presented to indicate any potential adverse impact on schools, churches or other public places of public use in the vicinity of the subject property.*

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- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

*The proposed use is compatible with existing zoning and with the Master Plan.*

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

*Only approximately 27 acres of the subject property will be developed. The balance of the parcel is covered by non-tidal wetlands and required buffer areas which will remain as open space. The developed portions of the property will probably be connected by crossings, some of which will traverse the wetlands. However the design of those crossings will be addressed during the wetlands engineering process. The proposed rezoning will therefore use will have little or no significant environmental impact.*

- (10) The preservation of cultural and historic landmarks.”

*No such landmarks have been identified.*

**RECOMMENDATION:**

It is recommended that the requested rezoning of the GI portion of the subject property to R3 be granted. It is further recommended that the requested rezoning of the B1 parcel to B3 be denied.

Date: October 12, 2007

REBECCA A BRYANT  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 9, 2007.**